IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
June 2000 Session

J. PHILIP HARBER, ET AL. v. J. BRENT NOLAN, ET AL.

Appeal from the Chancery Court for Anderson County
No. 99CH7893 Hon. William E. Lantrip, Chancellor

FILED AUGUST 3, 2000

No. E2000-00356-COA-R3-CV

This suit arose from the garnishment of the Plaintiffs' bank account by or on behalf of the Defendants. Plaintiffs sought a declaratory judgment pursuant to T.C.A. § 45-2-703(a) as to their rights to the funds held as tenants by the entirety. Defendants moved to dismiss for lack of subject matter jurisdiction and improper venue and for Rule 11 Sanctions. The Trial Court granted the Motion to Dismiss and denied the Motion for Rule 11 Sanctions. We reverse the Judgment insofar as it dismissed the complaint against the creditor for lack of jurisdiction and improper venue. We affirm all other aspects of the Judgment, and remand the case to the Anderson County Chancery Court for further proceedings consistent with our Opinion.

Tenn. R. App. P. 3; Judgment of the Chancery Court Affirmed in Part, Reversed in Part, and Case Remanded.

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS and CHARLES D. SUSANO, JR., J., joined.

David A. Stuart, Clinton, for the appellants, J. Philip Harber and Martha C. Harber.

J. Brent Nolan, Knoxville, for the appellees, Roger D. Hyman, J. Brent Nolan and The Nolan Law Firm, P.C.

OPINION

Background

The parties to this lawsuit are attorneys, a law firm, and Plaintiff/Appellant Martha C. Harber, the wife of Plaintiff/Appellant attorney J. Philip Harber. The matter in dispute arose from an earlier lawsuit. In that earlier suit, attorney Roger Hyman obtained a Judgment against attorney J. Philip Harber in the amount of $4,000. Hyman's attorney, J. Brent Nolan, deposed J. Philip

Harber and learned of assets which might be used to satisfy the Judgment. Hyman, through attorney Nolan, filed an execution in Union County Chancery Court against a bank account held in the names of J. Philip and Martha Harber at First American National Bank in Anderson County. Nolan hand-carried the filed execution to the Sheriff of Anderson County, who served it upon the bank. First American Bank tendered $4,375.83 from the Harber's account to the Clerk and Master of the Union County Chancery Court, who deposited the funds in that Court's account at Commercial Bank in Maynardville, where the funds remain pending the outcome of this appeal.

The Harbers filed this suit in Anderson Chancery Court against Hyman, Nolan, and Nolan's law firm alleging that the bank account is owned by the Harbers as tenants by the entirety, and asking the Court to establish their rights to the funds pursuant to T.C.A. § 45-2-703(a). They sought a declaratory judgment that the funds are not subject to execution or garnishment to satisfy a judgment against only Mr. Harber because the funds were held in the bank account of Mr. and Mrs. Harber as tenants by the entirety. They also sought a permanent injunction to prohibit and restrain Hyman and Nolan from executing on the bank account or any other marital property of theirs in the future. Defendants Nolan and The Nolan Law Firm filed a Motion for Rule 11 Sanctions against the Harbers and their attorney because the Harbers named J. Brent Nolan and The Nolan Law Firm as Defendants in the Complaint. All Defendants filed a Motion to Dismiss the Complaint. Defendants' motion stated that it was pursuant to Tennessee Rules of Civil Procedure 12.02(6), failure to state a claim upon which relief could be granted. However, the motion also raised as grounds lack of subject matter jurisdiction and improper venue, Rules 12.02(1) and (3).

There is no evidentiary transcript in this case. The record consists of the pleadings of the parties, the affidavits accompanying those pleadings, and a brief transcript of the statements and arguments of counsel before the Trial Court.

The Trial Court granted Defendants' Motion to Dismiss and denied Defendants' Motion for Rule 11 Sanctions. The Trial Court's Order provides:

> This matter came before the court on December 3, 1999, upon the Defendants' Motion to Dismiss for lack of jurisdiction and venue and Defendants' Motion for Rule 11 Sanctions. After reviewing the record in this cause and hearing argument of counsel, it is the opinion of this court that the Motion to Dismiss is well taken. It is therefore, ORDERED, ADJUDGED and DECREED, that Defendants' Motion to Dismiss is hereby granted and this case shall be and the same is hereby DISMISSED. It is further, ORDERED, ADJUDGED and DECREED, that Defendants' Motion for Rule 11 Sanctions is hereby DENIED.

The Trial Court's Order neither grants nor denies Defendants' motion pursuant to Rule 12.02(6), failure to state a claim. As reflected in the Order, the Trial Court apparently granted Defendants' Motion to Dismiss on the basis of lack of jurisdiction and venue and not for a failure to state a claim upon which relief can be granted.

Discussion

The Harbers appeal the Judgment of the Trial Court and raise the following issue, which we quote:

> Whether plaintiffs' cause of action for declaratory judgment and injunctive relief, arising from service of a garnishment on plaintiffs' bank in Anderson County, Tennessee, where they maintained ownership of the funds on deposit as husband and wife and tenants by the entirety, was properly dismissed for lack of jurisdiction and venue, by the Anderson County Chancery Court?

Defendants/Appellees respond that the Trial Court correctly dismissed the Complaint for lack of jurisdiction and venue because the funds seized pursuant to the execution remain *in custodia legis* with the Union County Chancery Court. They also argue that even if the doctrine of *in custodia legis* does not apply, Anderson County does not have jurisdiction or venue over this proceeding. Further, they argue that the Trial Court should have sanctioned the Harbers, and that this Court should sanction them for filing a frivolous lawsuit and a frivolous appeal.

The Trial Court's conclusions of law are subject to a *de novo* review with no presumption of correctness. *Ganzevoort v. Russell*, 949 S.W.2d 293 (Tenn. 1997).

The Harbers argue that the Trial Court erred in dismissing their Complaint filed under T.C.A. § 45-2-703, which provides, as pertinent:

> § **45-2-703. Deposits in names of two or more persons; multiple-party deposit accounts; disclosures**
> (a) When a deposit has been made or shall hereafter be made, in any bank, in the names of two (2) or more persons, payable to either, or survivor, such deposit, or any part thereof, or any interest or dividend thereon, may be paid to either of such persons, whether the others be living or not; and the receipt or acquittance of such person so paid shall be a valid and sufficient release and discharge to the bank for any payment so made. Any balance so created, including, without limitation, any balance held by spouses, shall be subject to assignment by, or the claim of any creditor of, either depositor, as if such depositor were the sole owner of the funds; provided, that if such creditor realizes its claim by any means other than enforcement of an assignment, pledge, or the grant of a security interest made by any one (1) of such depositors, any other depositor not indebted to the creditor may, by commencing a separate action against the creditor, establish such rights as that depositor may have in the funds.

A basic principle of statutory construction is to ascertain and give effect to the legislative intent without unduly restricting or expanding a statute's coverage beyond its intended scope. The appellate court must first examine the language of a statute and apply its ordinary and plain meaning. *Blankenship v. Estate of Bain,* 5 S.W.3d 647 (Tenn. 1999).

T.C.A. § 45-2-703(a) provides a specific remedy for a non-debtor spouse depositor whose funds are garnished by the creditor of a debtor spouse. Ms. Harber, as a non-debtor spouse depositor, has a right under T.C.A. § 45-2-703(a) to "commence a separate action against the creditor" to establish such rights as she may have in the funds. Defendants/Appellees argue that the Harbers' Complaint for Declaratory Judgment does not satisfy that statute, because it is not "a separate action against the creditor," and therefore the Trial Court properly granted the Motion to Dismiss on that basis. We find this argument unpersuasive. Ms. Harber's interest in the funds cannot be determined without also determining Mr. Harber's interest in the funds. Although Mr. Harber could not bring this suit individually, he is a proper party in Ms. Harber's suit to determine her rights to those funds. Moreover, T.C.A. § 29-14-107 requires that when declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration. We hold that Ms. Harber's having included her husband as a party does not offend the statutory requirement that the non-debtor depositor commence "a separate action against the creditor." T. C. A. § 45-2-703(a) creates Ms. Harber's right to a separate action ". . . against the creditor. . . ." We are unaware of any law, and none has been cited to us, that restricts Anderson County Chancery Court's having subject matter jurisdiction over a suit brought pursuant to this statute. Anderson County Chancery Court has subject matter jurisdiction over this suit. Accordingly, we find the Trial Court erred in dismissing Ms. Harber's Complaint against her husband's creditor, and that Mr. Harber is a proper party to that suit.

As discussed, we are aware that the Trial Court's Order does not address whether or not the complaint failed to state a cause of action against Nolan or The Nolan Law Firm, P.C. However, we, in our discretion, will address this issue in order to prevent needless litigation. *See* Tenn. R. App. P. 13(b). T. C. A. § 45-2-703(a) limits Ms. Harber's right to a separate action ". . . against the creditor. . . ." Roger D. Hyman is the "creditor." Neither Nolan nor his law firm is the "creditor," and they are not proper parties to this lawsuit pursuant to T.C.A. § 45-2-703(a). Therefore, although on different grounds, we affirm the Trial Court's dismissal of the complaint against Nolan and The Nolan Law Firm, P.C.

The Trial Court apparently also dismissed the Harbers' Complaint for improper venue. The Harbers appeal that decision and argue that suit was properly filed in Anderson County pursuant to T.C.A. § 16-11-114 and/or T.C.A. § 20-4-101.

T.C.A. § 16-11-114 provides:

> **16-11-114. Venue of Suits. - -** The local jurisdiction of the Chancery Court is also subject to the following rules:
>
> * * *

> (2) Bills seeking to enjoin proceedings at law may be filed in the county in which the suit is pending, or to which execution has issued.

T.C.A. § 20-4-101 provides, as pertinent:

> **Transitory actions.**
> (a) In all civil actions of a transitory nature, unless venue is otherwise expressly provided for, the action may be brought in the county where the cause of action arose or in the county where the defendant resides or is found.

The Harbers argue that venue is proper under T.C.A. § 16-11-114 "in the county to which execution has issued," and that execution in this case issued to Anderson County. Further, they argue that the cause of action "arose in Anderson County, when the garnishment in this cause was served upon plaintiffs' marital account in Anderson County . . . ," and, therefore, under T.C.A. § 20-4-101(a), Anderson County is a proper venue.

This Court held in *McGee v. First National Bank*, No. 01A01-9508-CV-00314, 1996 WL 11208 (Tenn.Ct. App., January 12, 1996), in a suit for abuse of process, that the place of issuance, and not the place of service of that process was the appropriate venue, as that is where the cause of action arose. Accordingly, in this case, the place of issuance, i.e., Union County, and not the place of service, i.e., Anderson County, would be the appropriate venue, under T.C.A. § 20-4-101 absent any other considerations. However, we are faced with a different situation than was the Court in *McGee v. First National Bank.* T.C.A. § 45-2-703(a) specifically provides for the filing of "a separate action" by the non-debtor spouse to determine her rights in the funds. If the Legislature had intended to require the non-debtor spouse to proceed in the action from which the garnishment arose, the Legislature would have said so rather than specifically allowing the non-debtor spouse to file "a separate action." The language of the statute itself indicates the legislative intent to allow that "separate action" to be filed not in the lawsuit from which the gamishment was issued, but in the county where the bank account is maintained. In the case before us, Anderson County is that county. Anderson County is a proper venue in which to file the "separate action" under T.C.A. § 45-2-703(a).

Also, T.C.A. § 16-11-114 permits venue in the county "*to* which execution has issued." [Emphasis added.] In this case, while the garnishment was filed in and issued from Union County, the garnishment was intended to, and did, take place in Anderson County. In short, Anderson County was the county "to which execution has issued."

Defendants/Appellees argue that the garnished funds were *in custodia legis* in Union County, and therefore the funds "must remain under the control of the Union County Chancery Court until that court issues an opinion as to the rights and interests of the various parties asserting claims to the property." While we do not disagree with Defendants that Union County Chancery Court does have control over these funds in its possession, that does not resolve the issue. In this case, Ms. Harber seeks the Anderson County Chancery Court's determination as to her rights to the funds against her husband's creditor. That Court can determine her rights even though the creditor's

garnishment has been accomplished and even if the garnished funds have been paid to the creditor by the Union County Chancery Court. The Anderson County Court does not lose its authority to order the creditor to reimburse Ms. Harber for her separate interest in those funds if the facts show that she has such an interest. It is not necessary to the resolution of this case that the Anderson County Chancery Court render any Order attempting to direct the Union County Court as to the disposition of funds in its possession. The Union County Chancery Court is free to disburse those funds as it would any other funds received as a result of a garnishment. However, the disbursement of the funds to the creditor in no way prevents the Anderson County Chancery Court from determining in the separate suit filed by Ms. Harber her rights to those funds. If the Anderson County Chancery Court determines that Ms. Harber has established her rights to all or some portion of those funds, Anderson County Chancery Court's order will require the creditor to return those funds to Ms. Harber.

Finally, we address the Trial Court's dismissal of the Motion for Rule 11 Sanctions filed by J. Brent Nolan and The Nolan Law Firm against the Harbers and their counsel. Mr. Nolan and The Nolan Law Firm alleged:

> By naming Mr. Hyman's counsel of record, his law firm, and the judgment Debtor, J. Philip Harber, Mr. Stuart and his clients have violated Rule 11 and appropriate sanctions, including an award of attorney's fees, should be awarded against Mr. Harber, Mrs. Harber and David Stuart, jointly and severally.

Our standard of review in such cases is whether the Trial Court abused its discretion in dismissing the Motion. *Krug v. Krug*, 838 S.W.2d 197, 205 (Tenn. Ct. App. 1992). We should not reverse for 'abuse of discretion' a discretionary judgment of a Trial Court unless it affirmatively appears that the Trial Court's decision was against logic or reasoning, and caused an injustice or injury to the party complaining. *Marcus v. Marcus*, 993 S.W.2d 596 (Tenn. 1999). We cannot help but observe that, according to the parties, this entire matter arose from an earlier grant of Rule 11 Sanctions to one of them against another. As we noted earlier, neither Nolan nor The Nolan Law Firm is the "creditor" under the statute. However, the Trial Court's Order granting the Motion to Dismiss did not address that issue. For these reasons, we hold the Trial Court's dismissal of the Motion for Rule 11 Sanctions was not an abuse of discretion. Nor are we inclined to grant such sanctions as to this appeal.

Conclusion

We reverse the Order of the Trial Court insofar as it dismissed the complaint against Mr. Hyman for lack of jurisdiction and improper venue. We affirm the Trial Court's Order dismissing the complaint against J. Brent Nolan and The Nolan Law Firm, P.C. We affirm the Judgment insofar as it denied Defendants' Motion for Rule 11 Sanctions. We decline to grant any sanction for a frivolous appeal. This case is remanded to the Anderson County Chancery Court for further proceedings consistent with our Opinion and for collection of the costs below. The costs on appeal are assessed one-half against Roger D. Hyman and one-half against J. Philip Harber and Martha C. Harber.

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D. MICHAEL SWINEY, JUDGE